IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2104 OF 1998.

1. M/s.The Standard Batteries Ltd.,
   a public limited company registered
   under Companies Act, 1956 and having
   their registered office at Vakola,
   Santacruz, Mumbai 400 055.

2. M/s.United India Insurance Co.Ltd.,
   a body corporate, subsidiary of the
   General Insurance Corporation of
   India having their registered and
   head office at 24, While Road,
   Madras 600 014, and one of their
   Mumbai Divisional Office No.8 at
   Union Co-operative Insurance Building
   Sir P.M.Road, Fort, Mumbai 400 001. ... Plaintiffs.

Versus.

M/s.Shree Chawneswar Road Lines,
carrying on their business as common
carriers and having their office at
Wadi Bunder Good Depot, C.Rly,Shed,
No.12, Mumbai 400 010. ... Defendant.

Shri V.S.Amin i/by M/s.V.S,Amin & Co. for the Plaintiffs.
None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 31st July, 2007.

ORAL JUDGMENT.:

1. This suit is listed under the caption "Undefended suits for exparte decree". The learned Counsel appearing for the Plaintiff has tendered on record affidavit in lieu of examination-in-chief of Shri Atul Ashok Mirlekar, Administrative Officer of the 2nd Plaintiff. The said affidavit is marked "X" for identification and is taken on record. Six original documents are also produced along with the list. The

original documents along with the list are marked "Y" (collectively) for identification and are taken on record.

2. According to the case of the Plaintiffs, the 1st Plaintiff hired services of the Defendant on 22nd April 1995 and entrusted to its charge consignment of Standard Lead Acid Stationary Cells Type Spg2500 HDP of 2V 2500AH Cap.Quantity-24 sets along with Stand/Accessories for carriage, consideration and safe delivery by road ex-Mumbai to Madras. The consignments were valued at Rs.6,21,563/- as per the invoices dated 30th April 1995. The Defendant accepted the said consignment and booked under the consignment note Nos.8136 dated 22nd April 1995 for carriage from Mumbai to Madras.

3. According to the case of the Plaintiffs, the truck carrying the said consignment met with an accident on 25th April 1995 near Shirval, Pune-Satara Road and the consignment was damaged. According to the Plaintiffs, the Defendant confirmed the said accident/damage to the consignment in letter dated 24th May 1995.

4. According to the Plaintiffs, the said consignment was duly insured with the 2nd Plaintiffs. The 2nd Plaintiff at the instance of the 1st Plaintiff

appointed an independent surveyor to assess the cause and extent of loss. The said surveyor submitted a report dated 25th May 1995. The 1st Plaintiff by letter dated 24th April 1995 had lodged a monetary claim with the Defendant for the said loss caused to the said consignment. The 2nd Plaintiff paid the said amount of Rs.1,04,290/- to the 1st Plaintiff as per the policy of insurance and thereafter on 24th July 1997, the 1st Plaintiff executed in favour of the 2nd Plaintiff a letter of subrogation as well as a special power of attorney authorising the 2nd Plaintiff to recover the said amount from the Defendant. The Plaintiffs by their Advocate's notice dated 23rd December 1997 called upon the Defendant to pay a sum of Rs.1,04,290/- being the loss suffered by the Plaintiffs. As the amount was not paid by the Defendant, the present suit has been filed for recovery of the amount along with interest thereon at the rate of 18% per annum.

5. The original consignment note dated 22nd April 1995 issued by the Defendants is placed on record and is proved by the evidence of Shri Atul Ashok Mirlekar. The letter dated 24th May 1995 sent by the Defendant to the 1st Plaintiff is also duly proved. In the said letter the Defendant contended that the truck carrying the consignment met with an accident at a place 25 K.M.

from Shrival after Pune on 23rd April 1995. The survey report dated 25th May 1995 submitted by M/s.Palak Consultech Services, the Surveyor appointed by the 2nd Plaintiff has been also produced and proved. The claim of the Plaintiffs has been duly proved by the affidavit in lieu of evidence of Shri Atul Ashok Mirlekar. The original documents are also duly proved.

6. The Plaintiffs have claimed interest at the rate of 18% per annum. Considering the facts and circumstances, the interest will have to be granted at the rate of 9% per annum from the date of institution of the suit till realisation.

7. Hence the suit is decreed in terms of prayer clauses (a) and (b) of the plaint. However, the interest payable will be at the rate of 9% per annum from the date of institution of the suit till realisation or payment.

8. The Plaintiffs will be entitled to refund of Court fees, if any, as per the Rules.

9. Certified copy is expedited.

Judge.